

HOUSE BILL No. 2157

By Committee on Local Government

1-24

AN ACT concerning counties; relating to computer software; amending K.S.A. 2000 Supp. 75-6104 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) As used in this section, “computer software” means any program or routine, or any set of one or more programs or routines, which are used or intended for use to cause one or more computers or pieces of computer related peripheral equipment, or any combination thereof, to perform a task or set of tasks. The term “computer software” shall include, but not be limited to, operating and application programs and all related documentation.

(b) Any county may:

(1) Develop, own, sell, lease, license, market or otherwise distribute computer software;

(2) obtain and own copyrights, trademarks, service marks or other intellectual property rights and indicia of ownership for computer software;

(3) adopt a licensing fee, royalty fee or other price structure for computer software; and

(4) enforce and defend its rights pertaining to computer software.

(c) Nothing in this section shall be construed to create an express or implied warranty on the part of any county for errors, omissions or other defects in any computer software.

(d) Nothing in this section shall be deemed to create an exception to the Kansas open records act not otherwise specifically provided by that act or other law.

Sec. 2. K.S.A. 2000 Supp. 75-6104 is hereby amended to read as follows: 75-6104. A governmental entity or an employee acting within the scope of the employee’s employment shall not be liable for damages resulting from:

(a) Legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution;

(b) judicial function;

(c) enforcement of or failure to enforce a law, whether valid or invalid, including, but not limited to, any statute, rule and regulation, or-

1 dinance or resolution;

2 (d) adoption or enforcement of, or failure to adopt or enforce, any
3 written personnel policy which protects persons' health or safety unless
4 a duty of care, independent of such policy, is owed to the specific indi-
5 vidual injured, except that the finder of fact may consider the failure to
6 comply with any written personnel policy in determining the question of
7 negligence;

8 (e) any claim based upon the exercise or performance or the failure
9 to exercise or perform a discretionary function or duty on the part of a
10 governmental entity or employee, whether or not the discretion is abused
11 and regardless of the level of discretion involved;

12 (f) the assessment or collection of taxes or special assessments;

13 (g) any claim by an employee of a governmental entity arising from
14 the tortious conduct of another employee of the same governmental en-
15 tity, if such claim is (1) compensable pursuant to the Kansas workers
16 compensation act or (2) not compensable pursuant to the Kansas workers
17 compensation act because the injured employee was a firemen's relief
18 association member who was exempt from such act pursuant to K.S.A.
19 44-505d, and amendments thereto, at the time the claim arose;

20 (h) the malfunction, destruction or unauthorized removal of any traf-
21 fic or road sign, signal or warning device unless it is not corrected by the
22 governmental entity responsible within a reasonable time after actual or
23 constructive notice of such malfunction, destruction or removal. Nothing
24 herein shall give rise to liability arising from the act or omission of any
25 governmental entity in placing or removing any of the above signs, signals
26 or warning devices when such placement or removal is the result of a
27 discretionary act of the governmental entity;

28 (i) any claim which is limited or barred by any other law or which is
29 for injuries or property damage against an officer, employee or agent
30 where the individual is immune from suit or damages;

31 (j) any claim based upon emergency management activities, except
32 that governmental entities shall be liable for claims to the extent provided
33 in article 9 of chapter 48 of the Kansas Statutes Annotated;

34 (k) the failure to make an inspection, or making an inadequate or
35 negligent inspection, of any property other than the property of the gov-
36 ernmental entity, to determine whether the property complies with or
37 violates any law or rule and regulation or contains a hazard to public
38 health or safety;

39 (l) snow or ice conditions or other temporary or natural conditions
40 on any public way or other public place due to weather conditions, unless
41 the condition is affirmatively caused by the negligent act of the govern-
42 mental entity;

43 (m) the plan or design for the construction of or an improvement to

1 public property, either in its original construction or any improvement
2 thereto, if the plan or design is approved in advance of the construction
3 or improvement by the governing body of the governmental entity or
4 some other body or employee exercising discretionary authority to give
5 such approval and if the plan or design was prepared in conformity with
6 the generally recognized and prevailing standards in existence at the time
7 such plan or design was prepared;

8 (n) failure to provide, or the method of providing, police or fire
9 protection;

10 (o) any claim for injuries resulting from the use of any public property
11 intended or permitted to be used as a park, playground or open area for
12 recreational purposes, unless the governmental entity or an employee
13 thereof is guilty of gross and wanton negligence proximately causing such
14 injury;

15 (p) the natural condition of any unimproved public property of the
16 governmental entity;

17 (q) any claim for injuries resulting from the use or maintenance of a
18 public cemetery owned and operated by a municipality or an abandoned
19 cemetery, title to which has vested in a governmental entity pursuant to
20 K.S.A. 17-1366 through 17-1368, and amendments thereto, unless the
21 governmental entity or an employee thereof is guilty of gross and wanton
22 negligence proximately causing the injury;

23 (r) the existence, in any condition, of a minimum maintenance road,
24 after being properly so declared and signed as provided in K.S.A. 68-
25 5,102, and amendments thereto;

26 (s) any claim for damages arising from the performance of community
27 service work other than damages arising from the operation of a motor
28 vehicle as defined by K.S.A. 40-3103, and amendments thereto;

29 (t) any claim for damages arising from the operation of vending ma-
30 chines authorized pursuant to K.S.A. 68-432 or K.S.A. 75-3343a, and
31 amendments thereto;

32 (u) providing, distributing or selling information from geographic in-
33 formation systems which includes an entire formula, pattern, compilation,
34 program, device, method, technique, process, digital database or system
35 which electronically records, stores, reproduces and manipulates by com-
36 puter geographic and factual information which has been developed in-
37 ternally or provided from other sources and compiled for use by a public
38 agency, either alone or in cooperation with other public or private entities;

39 (v) any claim arising from providing a juvenile justice program to
40 juvenile offenders, if such juvenile justice program has contracted with
41 the commissioner of juvenile justice or with another nonprofit program
42 that has contracted with the commissioner of juvenile justice; ~~or~~

43 (w) performance of, or failure to perform, any activity pursuant to

1 K.S.A. 2000 Supp. 74-8922, and amendments thereto, including, but not
2 limited to, issuance and enforcement of a consent decree agreement,
3 oversight of contaminant remediation and taking title to any or all of the
4 federal enclave described in such statute; or

5 *(x) developing, owning, selling, leasing, licensing, marketing, distrib-*
6 *uting, copyrighting or trademarking computer software as defined by sec-*
7 *tion 1, and amendments thereto, or exercising any other right provided*
8 *in such section.*

9 The enumeration of exceptions to liability in this section shall not be
10 construed to be exclusive nor as legislative intent to waive immunity from
11 liability in the performance or failure to perform any other act or function
12 of a discretionary nature.

13 Sec. 3. K.S.A. 2000 Supp. 75-6104 is hereby repealed.

14 Sec. 4. This act shall take effect and be in force from and after its
15 publication in the statute book.

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